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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing	)	
	)	CC Docket No. 98-170
and	)	
	)	
Billing Format	)	

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

Katherine M. Harris
Stephen J. Rosen
John P. Stanley
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006
(202) 429-7000

Mary McDermott
Senior Vice President/Chief of Staff for Government Relations
Todd B. Lantor
Manager, Government Relations
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561
(703) 739-0300

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REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),[1] by its attorneys, hereby respectfully submits this reply to comments filed regarding the Commission's *Notice of Proposed Rulemaking* in the above-captioned docket.[2] As set forth below, commenters provided substantial support for PCIA's position, articulated in its initial comments, that the Commission should refrain from adopting onerous regulations that describe in detail the permissible content and format of the customer bills prepared by CMRS and fixed wireless service providers. Numerous commenters also cautioned the Commission, as did PCIA, not to limit carriers' ability

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[1] PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

[2] *Truth-in-Billing and Billing Format* (Notice of Proposed Rulemaking), CC Docket No. 98-170 (rel. Sept. 17, 1998) ("*Notice*").

to collect reasonable universal service contributions from individual end users, or to limit their ability to craft their own truthful and non-misleading descriptions of such charges.

I. INTRODUCTION AND SUMMARY

PCIA has urged the Commission not to subject the wireless industry to rules prescribing the permissible format and content of end user bills. As the opening comments demonstrate, forcing CMRS carriers into a rigid regulatory regime designed for local exchange carriers ("LECs") cuts against the deregulatory paradigm Congress intended for the wireless industry. Furthermore, there is simply no basis in the record for micromanging the billing practices of the wireless industry. Indeed, commenters have demonstrated that application of these rules to wireless carriers would actually do more harm than good, particularly when viewed from the consumers' perspective.

The wireless industry should not be subjected to rules clearly designed to combat problems unique to landline billing, simply as an afterthought. PCIA notes that the Commission mentioned the wireless industry only *once* in the section of the *Notice* discussing the proposed format and content regulations, making the bare assertion that the issues relating to LEC billing are "equally applicable" to wireless carriers.[3] Moreover, it is highly questionable whether the Commission even has the authority to promulgate the detailed rules proposed in the *Notice.*

PCIA's position on issues relating to universal service line item charges also received strong support in the comments. Various parties joined PCIA in urging the Commission not to prescribe the precise amount carriers are allowed to collect from each end user. A wide range of commenters also cautioned the Commission that a rule that precludes a carrier's ability to craft

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[3] *See Notice* at ¶ 6.

its own truthful and non-misleading description of such charges would violate well-established First Amendment rights.

II. RULES DICTATING THE FORMAT AND CONTENT OF WIRELESS CUSTOMERS' BILLS ARE NEITHER APPROPRIATE NOR NECESSARY

A. The Proposed Rules Would Violate the Deregulatory Mandate for Wireless Services.

The wireless and wireline sectors of the telecommunications industry have evolved, over the years, pursuant to entirely different regulatory regimes. While the wireline market sector has been heavily regulated since the early days of the Commission, Congress has clearly expressed its intention to treat differently the newer market for wireless services.[4] When Congress rewrote Section 332 of the Act to codify a new federal policy for regulating mobile radio services in 1993, it specifically provided that competitive wireless carriers may be exempted from many of the detailed regulations governing the wireline industry.[5] In implementing this deregulatory paradigm, the Commission affirmed that it sought to "achiev[e] the overarching congressional goal of promoting opportunities for economic forces -- not regulation -- to shape the development of the [wireless] marketplace."[6] The Commission also acknowledged that "Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states could demonstrate a clear cut need."[7]

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[4] *See* Comments of Bell Atlantic Mobile 2-6 (herein, "Comments" refer to opening comments filed by parties in this proceeding on Nov. 13, 1998).

[5] *See* 47 U.S.C. § 332(c).

[6] *Implementation of Sections 3(n) and 332 of the Communications Act,* 9 FCC Rcd. 7988, 8004 (1994).

[7] *Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers*, (Report and Order), 10 FCC Rcd.

(Continued...)

Accordingly, truth-in-billing rules designed to combat problems in landline service billing should not be applied to the wireless industry simply for the sake of regulatory uniformity. Instead, consistent with the deregulatory paradigm for wireless services, the Commission should refrain from invasive micromanagement of wireless carriers' billing practices. There is nothing in the record to suggest that this is one of the rare instances in which there is a "clear cut need" for the Commission to intervene to correct a failure in the competitive market. Rather, as shown below, the wireless industry is characterized by healthy competition, which provides carriers ample incentive to satisfy consumer demand for clear, understandable bills.

B. Competition in the Wireless Market Ensures Bills That Are Responsive to Consumers' Needs.

Many commenters share PCIA's observation that, because the wireless industry is intensely competitive,[8] wireless carriers must be responsive to consumer demands in all areas of service, including billing.[9] A wireless carrier that dares to generate bills that are confusing or, even worse, inaccurate or misleading, risks losing its customers to any number of available competitors. As Omnipoint Communications recognized, "the ability of consumers to switch to another CMRS provider in the same market ensures that services are not only competitively priced, but that carriers also provide customer care and treat customers fairly on billing

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7025, 7031 (1995).

[8] The FCC itself has acknowledged that the CMRS industry is highly competitive. *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Third Report, FCC 98-91 at 18-21 (June 11, 1998).

[9] *See, e.g.,* Comments of PCIA at 7; Comments of CommNet at 2; Comments of AirTouch at 5-6.

matters."[10] While a regulatory solution may be considered for a less competitive industry in which customers are unable to "vote with their feet," it is clear that wireless customers are able to punish carriers that generate confusing or misleading bills.[11] Indeed, the high churn rate in the wireless industry represents tangible evidence that consumers are willing and able to switch carriers to take advantage of lower prices or better service.[12]

As a matter of competitive necessity, then, wireless carriers must offer their customers bills that are clear and straightforward, or they risk losing out to a competitor. As a result, a number of wireless carriers note that their bills are already clear, uncluttered, and consumer-friendly.[13] Accordingly, FCC intervention is not necessary to protect wireless consumers from unreasonable or unfair billing practices.

C. The Wireless Industry Has Not Experienced Serious Problems Relating to Billing That Merit Regulatory Intervention.

In its comments, PCIA asserted that the available information indicates that the wireless industry has not experienced serious problems relating to billing that merit regulatory intervention.[14] A large number of commenters agreed with this conclusion.[15] As noted above,

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[10] Comments of Omnipoint at 8.

[11] *See* Comments of Bell Atlantic Mobile at 7; Comments of Omnipoint at 8; Comments of Nextel at 6.

[12] *See, e.g.,* Comments of Bell Atlantic Mobile at 8.

[13] *See* Comments of Nextel at 7; Comments of Rural Carriers' Association at 4; Comments of Primeco at 1, 5; Comments of United States Cellular Corporation at 9.

[14] *See* Comments of PCIA at 5-7. Indeed, the wireless industry routinely conducts surveys to determine whether customers are confused by their bills. Response to such surveys indicates that consumers overwhelmingly find their bills for wireless services clear and unconfusing. This may be attributable, in part, to the fact that many wireless offerings are new services that employ new billing systems, in contrast to the wireline industry where older, outdated billing systems may be found.

some parties explained that competition in the CMRS industry is responsible for ensuring that CMRS carriers satisfy customer demands for clear, accurate bills. Commenters also recognized that the wireless industry bills simply do not lend themselves to the abuses identified in the *Notice*.

A review of the comments filed in this proceeding identified no evidence, *or even an allegation*, that consumer confusion is a problem in the CMRS industry. Indeed, while almost every commenter joined the FCC in recognizing the twin problems of "cramming" and "slamming," many parties noted that these problems do not exist in the wireless industry.[16] In fact, as PCIA explained in its initial comments, the nature of wireless service and the practices of wireless carriers are such that a wireless customer cannot be "crammed" or "slammed" in the same way as a local exchange carrier's customers.[17] Even Congress has recognized this fact -- carving out an exception for the CMRS industry in proposed legislation on slamming.[18] In the end, neither the comments nor the *Notice* offers any suggestion that the wireless industry faces the same "cramming" and "slamming" problems as the local exchange market sector.

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15 *See, e.g.,* Comments of AirTouch at 4; Comments of United States Cellular Corporation at 9; Comments of Primeco at 8; Comments of Bell Atlantic Mobile at 7; Comments of Omnipoint at 8; Comments of Nextel at 6; Comments of Rural Cellular Association at 4.

16 *See* Comments of Airtouch at 2-6; Comments of Nextel at 2, 8; Comments of Rural Cellular Association at 2; Comments of Primeco at 5; Comments of Bell Atlantic Mobile at 7; Comments of United States Cellular Corporation at 6.

17 *See* Comments of PCIA at 3, 6-7.

18 *See* S. Rep. No. 105-183, at 8 (1998) (stating that "[t]he Committee intends to exempt [CMRS] providers from section 258 of the Communications Act because, within the [wireless] service industry, the number of slamming complaints has been negligible"); *see also* Comments of BellSouth at 11 n.19.

The few commenters that did support the imposition of new format and content rules focused exclusively -- as the FCC did in its *NPRM* -- on local exchange carriers' bills, and problems unique to that industry sector. For example, the National Association of State Attorneys General filed comments explicitly endorsed by 27 states and on behalf of the entities responsible for "investigat[ing] and prosecut[ing] persons engaged in fraudulent and deceptive practices, including such practices engaged in by providers of telecommunications products and services."[19] Significantly, the NAAG comments did not even mention the wireless industry but, instead, urged the FCC to remedy problems in *local exchange carriers'* billing practices.[20] The other commenters that raised arguments on behalf of consumers and consumer groups similarly focused on LEC "cramming" and "slamming," and did not suggest that there exists a need to extend prescriptive rules to the wireless industry.[21]

III. THE PROPOSED RULES WOULD IMPOSE SUBSTANTIAL COSTS ON WIRELESS CARRIERS.

Based on the comments filed by knowledgeable parties, there can be no question that carriers would be forced to make substantial additional expenditures in order to comply with the proposed rules. Numerous wireless carriers gave specific examples of ways in which compliance with the new rules would add to their costs associated with billing.[22] In light of the fact that there

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19 *See* Comments of the National Association of Attorneys General ("NAAG") at 2.

20 *See* Comments of NAAG at 14 (concluding its comments by asking the FCC to adopt rules "which require local exchange carrier bills to contain a full non-misleading description of all charges, and complete information").

21 *See generally,* Comments of National Consumers' League; Comments of National Association of Consumer Agency Administrators (joining the comments of NAAG); Comments of The Bills Project.

22 *See* Comments of GTE at 11; Comments of Airtouch at 2-3; Comments of Telecommunications Resellers Association at 6; Comments of The Rural Telecommunications

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is no compelling need to impose these new mandates on wireless carriers, such costs, which will likely be passed on to consumers, will adversely affect the wireless marketplace.

Commenters identified three major ways in which the proposed format and content rules would increase carriers' costs. First, as PCIA and numerous wireless carriers explained, the proposed rules would require costly modifications to current billing systems, both in terms of replacing software, developing new procedures, and devoting staff time to implementing these changes.[23] Second, requiring carriers to add pages to their bills (*e.g.*, by adding new "summary pages" and "status change pages")[24] would add significantly to the cost of producing the bills.[25] As demonstrated below, the additional cost of printing, paper, and postage would be substantial. Finally, the new rules would require carriers to devote resources, beyond their existing customer service functions, to ensure compliance with the specific rules, and the Commission would have to establish new enforcement mechanisms.

At least two carriers were able to quantify specifically the cost of implementing the proposed rules. GTE noted that the cost of tacking an additional page onto its monthly wireless bills, as the proposed rules would require, would add $9.6 million in annual mailing costs

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Group at 5; Comments of Liberty Cellular at 3; Comments of Nextel at 13; Comments of Rural Cellular Association at 4; *see also* Comments of SBC at 8; Comments of ITTA at 4-5; Comments of ALTS at 7.

[23] *See* Comments of PCIA at 9; Comments of GTE at 11; Comments of Liberty Cellular at 3; Comments of Nextel at 13. Other commenters also expressed concerns about the high cost of compliance. *See, e.g.*, Comments of Rural Cellular Association at 4; Comments of Telecommunications Resellers' Association at 6; Comments of Rural Telecommunications Group at 5.

[24] *See Notice* ¶¶ 18-19.

[25] *See* Comments of PCIA at 9; Comments of GTE at 11.

alone.[26] BellSouth indicated that the addition of one extra page to its wireless bills would require the expenditure of $500,000 to $1 million in programming costs, and projected that the additional page requirement, by itself, would translate into an extra $0.07 per customer, per month.[27] BellSouth also noted that, "if the Commission requires CMRS bills to contain information from previous bills (as a comparison to current billing activity), providers would be forced to implement and maintain complex databases, at a cost that would be astronomical."[28]

Furthermore, PCIA agrees with Liberty Cellular, the Rural Telecommunications Group, and others, that the cost of compliance faced by smaller wireless carriers would be particularly burdensome.[29] While it may, conceivably, be feasible for larger carriers with more sophisticated and flexible billing software to comply with detailed billing rules, medium-sized and smaller carriers will be less likely to have billing systems that can simply be "tweaked" to produce the required modifications. In fact, while all wireless carriers would be forced to modify their billing practices substantially if the FCC adopts the proposed rules, PCIA recognizes that smaller carriers may be forced to replace their entire billing systems (equipment, software, etc.) in order to comply with the proposed federal format and content mandates.

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[26] Comments of GTE at 11.

[27] Comments of BellSouth at 15.

[28] *Id.*

[29] *See, e.g.,* Comments of Liberty Cellular at 2-3; Comments of the Rural Telecommunications Group at 6-7 (recognizing that rural carriers cannot spread the cost of regulatory compliance over a large customer base and would suffer a significant financial hardship if the proposed rules are enacted and, accordingly, urging the FCC to exempt small and rural providers from any such requirements); Comments of the Rural Cellular Association at 3-5 (the proposed rules would unduly impact small, rural wireless carriers); *see also* Comments of Project Mutual Telephone Cooperative Association at 3-4 (billing rules will especially burden rural carriers).

These projections disprove the suggestion by some parties that the proposed billing mandates would not be very costly to implement.[30] Also, while the NAAG asserts that *local exchange carriers* would be able to comply easily with the proposed rules because they are "in the process of altering the format of their bills,"[31] it did not make a similar assessment for wireless carriers. Indeed, the NAAG comments reflect the fact that the focus of the Commission in this proceeding has been -- and should be -- on examining whether local exchange carriers' bills should be regulated.

IV. IMPOSING RULES THAT IGNORE THE SPECIAL CIRCUMSTANCES OF THE WIRELESS INDUSTRY WOULD DO MORE HARM THAN GOOD

Because it does not appear that wireless customers are confused by their bills, strict new rules would require that these customers pay for protections they do not need. The new rules thus will waste the resources of wireless carriers and wireless consumers, and have the effect of stunting the growth of this industry. Even worse, however, numerous commenters noted that the proposed one-size-fits-all billing rules would further harm consumers by making wireless bills needlessly confusing, and also rendering impermissible certain types of flexible billing options currently enjoyed by wireless consumers.

Wireless carriers have been able to develop flexible billing formats to suit the needs of different groups of customers. For example, AirTouch explained that it offers cellular

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[30] *See* Comments of The Bills Project at 7 (asserting, without any support, that the proposed rules "should not add any significant additional costs").

[31] Comments of NAAG at 7. NAAG also noted that LECs "are not required to undertake billing and collection activities on behalf of any entity," and suggested that the cost of compliance could be viewed simply as a cost of deciding to conduct billing and collection activities on behalf of third party service providers. *Id.* As noted above, CMRS providers do not bill on behalf of third parties in the same manner as LECs and, accordingly, this rationalization does not apply to the wireless industry.

subscribers in some markets the choice of receiving "summary" bills instead of standard, detailed bills.[32] While these bills may contain less information than proposed under the *Notice*, this service is popular because it is cheaper than regular service and provides consumers with only the level of billing detail they actually desire. AirTouch would be forced to discontinue this service if the proposed billing mandates are expanded to cover the wireless industry. Similarly, Omnipoint points out that it would be unable to offer its customers a "No Fee Prepay (sm)" service, under which the standard monthly bill is eliminated altogether.[33]

Several wireless carriers also noted that requiring carriers to identify every other entity providing services and the charges for those services,[34] if applied to wireless carriers, would generate substantial customer confusion.[35] In particular, a CMRS end user "roaming" outside of its home carrier's service area actually receives service from one (or more) wireless carriers, pursuant to the inter-carrier roaming agreements negotiated between wireless carriers. Nobody has suggested that wireless customers need to (or want to) know precisely how every one of its calls is routed, and precisely how carriers compensate each other under roaming arrangements. Instead, including this information on every bill would needlessly burden wireless carriers and may well confuse consumers. This circumstance again demonstrates that it is inadvisable to extend, simply for the sake of uniformity, safeguards designed for the landline market to the wireless industry.

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32 *See* Comments of AirTouch at 3.

33 *See* Comments of Omnipoint at 8-9.

34 *See Notice* ¶ 23.

35 *See* Comments of Bell Atlantic Mobile at 12-13; Comments of United States Cellular Corporation at 7; Comments of AirTouch at 6; *see also* Comments of Nextel at 10.

PCIA also agrees with commenters who identified another proposed rule that would make absolutely no sense in the wireless context: the requirement that all telecommunications services be designated as either "deniable" or "non-deniable."[36] The concept of a "non-deniable" charge is a long-standing state regulatory protection designed to ensure that local telephone companies do not terminate basic service based on non-payment of certain charges. Unlike incumbent LECs, CMRS carriers have not been prohibited from disconnecting service if a customer refuses to pay a valid charge.[37] Accordingly, requiring wireless carriers to include language on their bills explaining the distinction between "deniable" and "non-deniable" charges would make no sense, and would only serve to confuse customers.

If, despite the record compiled in this proceeding, the Commission deems it necessary to take some action, PCIA urges the Commission at most to develop *guidelines* for the wireless industry. Allowing carriers to apply flexible guidelines would avoid many of the pitfalls described above. Moreover, as compared to rigid, detailed regulations, such an approach would better suit the deregulated, highly competitive paradigm of the wireless industry. Many commenters agreed with PCIA that adopting best-practices guidelines would be a far better course of action than imposing detailed mandates governing format and content of bills.[38]

V. THE FCC LACKS AUTHORITY TO IMPOSE EXTENSIVE FORMAT AND CONTENT RULES ON WIRELESS CARRIERS.

In its initial comments, PCIA asserted that the Commission lacks jurisdiction to promulgate the detailed consumer protection measures proposed in the *Notice*. In particular,

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[36] *See* Comments of Bell Atlantic Mobile at 13; Comments of USCC at 6; Comments of BellSouth at 14; *see also Notice* at ¶ 24.

[37] *See* Comments of BellSouth at 14.

PCIA noted that Section 201(b) of the Communications Act gives the Commission authority to ban unreasonable charges and practices, but does not give it unlimited authority to regulate the commercial relationship between a wireless carrier and its customers. Similarly, United States Cellular Corporation noted that Section 201(b) grants the FCC enforcement authority but not "to dictate, in advance, the content of customer bills."[39] Indeed, the proposed rules go far beyond enforcing this statutory provision against bad actors, and have the effect of prohibiting format and content that is reasonable and, accordingly, is not covered by Section 201(b).

The proposals contained in the *Notice* thus exceed the Commission's authority to act. Under the Communications Act of 1934, as amended, the Commission at most may be able to develop flexible, general guidelines that provide guidance for wireless carriers. Indeed, as noted above, articulating guidelines or best practice principles is the most that can be justified for the wireless industry, as vibrant competition will ensure that consumers are well served by the carriers. And, if necessary, the Commission has all the tools necessary to pursue "bad actors" on an individual basis.[40]

VI. INDIVIDUAL STATE REGULATION OF CONSUMER BILLING IS INFEASIBLE

In its comments, PCIA briefly explained that a patchwork of state rules governing telephone carriers' bills needlessly adds to the administrative costs faced by wireless carriers. To the extent the Commission decides to issue detailed rules or guidelines applicable to wireless

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38 *See, e.g.,* Comments of Liberty Cellular at 5.

39 *See* Comments of USCC at 3-4; Comments of SBC at 3-4.

40 The Commission acknowledged that it "will not hesitate to take enforcement action in this area," pursuant to its authority under Section 201(b). *See Notice* at 5 n.17.

carriers, the burden of harmonizing these possibly conflicting rules would be heightened. Several wireless carriers joined PCIA on this point, noting that conflicting state rules do not advance the interests of truth in billing.[41] PCIA agrees with Omnipoint Communications that, in addition to adding to wireless carriers' costs, "the patchwork of varying state regulation which developed in response to the ILEC industry is . . . completely inconsistent with the Commission's goal of creating a comprehensive yet reasonable set of federal CMRS billing principles."[42] Indeed, it is inherently unreasonable to require wireless carriers to tailor their billing practices to satisfy 50 different requirements in 50 different states.

The Commission should take appropriate steps, including preemption, to ensure a reasonable, uniform approach to billing that protects the interests of wireless customers and carriers.[43] Such action would be consistent with the goal of ensuring that the interests of consumers are protected, in a consistent manner, throughout the United States. Also, the Commission would be protecting wireless carriers from unnecessary regulation and expense, thereby advancing the interests of consumer choice, competition, and service innovation in the CMRS industry. Finally, preemption would avert the possibility of a conflict between inconsistent federal and state policies and rules. PCIA submits that this instance falls within the scope of the Commission's preemption authority: the FCC has the power to preempt state law that, as it is here, is inconsistent with federal law, or that obstructs the achievement of federal objectives, so long as the Commission acts within its congressionally delegated authority.[44]

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41 *See* Comments of Omnipoint at 11; Comments of Teligent at 8; Comments of Primeco at 15.

42 Comments of Omnipoint Communications at 11.

43 *See id.* at 12.

44 *See Louisiana PSC v. FCC*, 476 U.S. 355, 368-69.

VII. PCIA'S POSITION ON ISSUES RELATING TO UNIVERSAL SERVICE LINE ITEMS ALSO RECEIVED STRONG SUPPORT IN THE COMMENTS

A. The Commission Should Not Prescribe the Amount of Universal Service Support That Carriers May Collect Directly From End Users.

In the *Notice,* the Commission sought comment on whether it should prohibit carriers from collecting from consumers an amount ear-marked for universal service support that "exceed[s] the costs for these items attributable to that consumer."[45] PCIA and several other commenters explained that, under the Commission's universal service regime, slight over- and under-collections are inevitable and therefore are neither unreasonable nor misleading.[46] Omnipoint, for example, pointed out that carriers simply cannot know at the time of billing what precise USF contribution will result from the telecommunications revenues derived from a given customer bill.[47] Accordingly, the Commission should find that it is reasonable for carriers to use a nondiscriminatory "best estimate" method of determining the line-item charge applied to each subscriber. PCIA also agrees with commenters that any rule that mandates the permissible amount of USF recovery is effectively a form of rate regulation.[48] Adoption of such a mandate would run contrary to the Commission's decision not to engage in wireless carrier rate regulation.

PCIA notes that, in its Second Recommended Decision released on November 25, 1998, the Joint Board on Universal Service recommended that the Commission provide carriers "strict

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45 *Notice* at ¶ 31.

46 Comments of Airtouch at 7; Comments of USCC at 8 n.3; Comments of Omnipoint at 14.

47 Omnipoint explained that a carrier can only estimate the level of support to be assessed to each individual end user because "USF contributions derived from a given bill depend on four variables that are not known at the time the carrier issues a bill." *See* Comments of Omnipoint at 14-15.

48 *See* CTIA 7, n.11, Primeco 15.

guidance regarding the extent to which they recover their universal service contributions from consumers," and that any line item assessment "be no greater than the carrier's universal service assessment rate."[49] PCIA opposes such a strict limitation for the reasons articulated in this docket.[50] Consumers will be best served if the Commission refrains from micromanaging the process by which carriers collect universal service contributions. Wireless carriers have, in the competitive marketplace in which they operate, every incentive to ensure that any universal service surcharge assessed on consumers is reasonable.

B. The Commission Should Ensure That Any Safe Harbor Language Describing Universal Service Contributions Is Truly Non-Mandatory.

In its opening comments, PCIA endorsed the availability of "safe harbor" language to be used to describe universal service line items. Such guidance may help carriers explain why they choose to assess an end-user universal service fee. PCIA emphasized, however, that a rule that directly or indirectly makes such language *mandatory*, or otherwise dictates the precise terminology that must be quoted on end-users' bills, would violate carriers' fundamental free speech rights under the First Amendment.

Many commenters echoed this concern, and acknowledged that carriers have an absolute First Amendment right to describe items on customer invoices with truthful and non-misleading

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[49] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Second Recommended Decision at ¶ 68, 69 (Nov. 25, 1998) ("*Joint Board Second Decision*").

[50] PCIA notes that the billing issues raised in the *Joint Board Second Decision* bear on the issues being discussed in the instant proceeding. Accordingly, PCIA requests that these Reply Comments be incorporated into the record of CC Docket No. 96-45.

terms.[51] Any rule that requires carriers to use FCC-mandated language, rather than alternative truthful, non-misleading language, would violate this First Amendment right.

These First Amendment concerns were clearly recognized by the Joint Board in its recent decision. Indeed, the Joint Board suggested that "truthful, non-misleading" statements regarding the nature of line items used to recover universal service contributions could not permissibly be prohibited by the Commission.[52] Accordingly, it urged the Commission to "carefully review the record in its proceeding before reaching any conclusion on these issues."[53] PCIA concurs with this essential analysis, and agrees that the Commission may not -- by prescribing or precluding certain billing language -- lawfully prohibit a carrier from crafting its own truthful, non-misleading description of the USF contribution.

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[51] *See* Comments of CTIA at 2, 8-9; Comments of TRA at 7; Comments of Omnipoint at 13-14. Moreover, citing similar concerns, at least two commenters opposed *any* safe harbor language. Comments of Airtouch at 9; Comments of Primeco at 12.

[52] The Joint Board concluded that "it would not violate the First Amendment to specifically prohibit carriers from including on their bills *untruthful or misleading statements* regarding the nature of line items used to recover universal service contributions," but that "restrictions on speech that ban truthful, non-misleading commercial speech . . . cannot withstand scrutiny under the First Amendment." *Joint Board Second Decision* at ¶ 71.

[53] *Id.*

VIII. CONCLUSION

PCIA endorses the Commission's goal of ensuring that consumers are provided with bills that are clear and are not misleading. For the reasons set forth above, however, and as detailed at length in parties' comments, the Commission should refrain from *mandating* the permissible format and content of wireless carriers' bills. There is simply no basis in the record for applying the proposed rules on wireless carriers and, moreover, such an action would do more harm to the wireless industry than good. Similarly, the Commission should not adopt rules mandating descriptive language pertaining to universal service contributions or unduly restricting the good faith application of surcharges by carriers to collect their universal service obligations.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: _____

Katherine M. Harris
Stephen J. Rosen
John P. Stanley
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006
(202) 429-7000

By: Todd Lantor /JPS

Mary McDermott
Senior Vice President/Chief of Staff for Government Relations
Todd B. Lantor
Manager, Government Relations
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561
(703) 739-0300

December 16, 1998

CERTIFICATE OF SERVICE

I, Jacquelyn Martin, hereby certify that on this 16th day of December, 1998, I caused copies of the foregoing "Reply comments of the Personal Communications Industry Association" to be delivered via hand to the following:

Judy Boley
Federal Communications Commission
1919 M Street, N.W.
Room 234
Washington, DC 20554

Timothy Fain
OMB Desk Officer
10236 NEOB
725 17th Street, N.W.
Washington, DC 20503

Jacquelyn Martin